



May 17, 1999

Mr. Bernardo J. Garcia
Sr. Assistant County Attorney
Harris County
1919 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-1345

Dear Mr. Garcia:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124304.

The Harris County Juvenile Probation Department (the "department") received an open records request for various categories of information concerning the requestor's son. In response to the request, you submit to this office for review three groups of records which you contend are responsive. You contend that the requested records are excepted from required public disclosure pursuant to section 552.101 of the Government Code. We have considered the exception and arguments you raise, and have reviewed the information submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Based on your brief to this office and a review of the submitted records, we believe that sections 58.005(a) and 58.007 of the Family Code are applicable to much of the requested information. Section 58.005(a) provides in pertinent part:

(a) Information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by

arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) a governmental agency if the disclosure is required or authorized by law;
- (5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;
- (6) the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
- (7) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

In this instance, the requestor is not among the listed individuals authorized to obtain the information at issue. We, therefore, conclude that, absent authorization from the juvenile court having jurisdiction over the child, the department must withhold the “diagnosis, examination, evaluation, or treatment” information contained in the submitted records pursuant to section 552.101 in conjunction with section 58.005(a) of the Family Code.

We next consider the application of section 58.007(b) of the Family Code to a portion of the requested records. Section 58.007(b) provides:

Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, *a juvenile probation department*, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court. [Emphasis added.]

As stated above, absent “leave of the juvenile court,” the requestor is not among those listed individuals having a right of access to the probation department’s records. We, therefore, conclude that pursuant to section 58.007(b) the department must withhold from the requestor most of the remaining information, consisting of “records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney.”¹

Finally, we address whether the department must release the medical records at issue to the requestor. Section 5.08 of article 4495b, V.T.C.S., provides in pertinent part:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section . . . may not disclose the information *except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.* [Emphasis added.]

The release of the medical information at issue is governed by the provisions of the Medical Practice Act. These medical records therefore may be released only in accordance with section 5.08(c) of article 4495b. Consequently, the department may release the medical information at issue to the requestor only upon the department’s determination that the release would be “consistent with the authorized purposes for which the information was first obtained.” *See also* V.T.C.S. art. 4495b, § 5.08(j)(1) (outlining requirements for written

¹We note that a portion of the requested information is also made confidential by section 261.201(a) of the Family Code in conjunction with 552.101.

authorization of release by patient or minor patient's parent). Otherwise, these records must be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 124304

Encl: Submitted documents

bcc: Ms. Claudia Cockle
5511 Turfwood Lane
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(w/o enclosures)